

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether OWCP properly reduced appellant's compensation to zero effective March 26, 2015 under 5 U.S.C. § 8113(b) for failing to cooperate with the early, but necessary stages of the vocational rehabilitation effort.

FACTUAL HISTORY

On November 21, 2012 appellant, then a 59-year-old Customs & Border Protection officer, filed a traumatic injury claim (Form CA-1) for a left shoulder injury he attributed to a November 7, 2012 training exercise where he was reportedly held by two individuals and then tased. OWCP accepted his claim for left shoulder acromioclavicular sprain, left shoulder rotator cuff strain, and left shoulder rotator cuff tear.

Appellant returned to light-duty work for the employing establishment on November 8, 2012. He returned to his regular work without restrictions on February 18, 2013 consistent with the recommendation of Dr. Jeffrey S. Abrams, an attending Board-certified surgeon. The employing establishment terminated appellant for cause effective March 8, 2013.³

On May 31, 2013 Dr. Abrams performed OWCP-authorized arthroscopic surgery on appellant's left shoulder, including rotator cuff repair, subacromial decompression, capsulotomy with release of adhesions, and distal clavicle resection. He released appellant to light-duty work effective January 27, 2014 with restrictions on lifting above his shoulders and he recommended that appellant undergo a functional capacity evaluation (FCE).

OWCP referred appellant for a second opinion examination with Dr. Jeffrey Lakin, a Board-certified orthopedic surgeon. In a May 20, 2014 report, Dr. Lakin posited that appellant had permanent work restrictions due to his work-related left shoulder injuries. He indicated that appellant could work eight hours per day with restrictions, including reaching above the shoulders for no more than four hours per day, lifting no more than 35 pounds, and climbing for no more than four hours per day.

Based upon Dr. Lakin's work restrictions, OWCP referred appellant in late July 2014 to a licensed vocational rehabilitation counselor for vocational rehabilitation services designed to return him to work. Appellant's rehabilitation counselor noted, in reports dated in August and September 2014, that he did not respond to her telephone messages and letters requesting that they meet to discuss the vocational rehabilitation program. In a September 17, 2014 letter, she requested that appellant meet her in person on September 26, 2014 for an initial assessment interview.

On September 26, 2014 the rehabilitation counselor received a telephone message from appellant indicating that he was in Florida and could not attend the meeting scheduled for September 26, 2014. In a September 29, 2014 text message, appellant informed the

³ Appellant received disability compensation on the daily rolls beginning March 9, 2013, and on the periodic rolls beginning May 4, 2014.

rehabilitation counselor that he had been in Florida for the past two months caring for his ill parents when she had attempted to contact him.

In an October 13, 2014 report covering the period September 14 to October 13, 2014, the rehabilitation counselor indicated that she had been unsuccessful in setting up an initial assessment interview with appellant and that, after making contact with him in late September 2014, he began to send text messages and e-mails from Florida in which he documented his “history and concerns.” She noted that she attempted to coordinate a time to speak to appellant on the telephone in order to discuss his current status and complete the initial interview process, but he indicated that he would only respond through text messages or e-mails.⁴ In a rehabilitation action report (Form OWCP-44) completed on October 13, 2014, the rehabilitation counselor checked a box entitled “Claimant Obstruction” and noted, “[C]laimant does not appear at scheduled meetings, fails to carry out agreed upon actions.” In her October 13, 2014 report, the rehabilitation counselor indicated that she completed the Form OWCP-44 and faxed it to OWCP’s rehabilitation specialist due to appellant’s failure to engage in direct verbal communication. She indicated that she would continue to attempt to contact appellant to complete the initial assessment interview. In a November 13, 2014 report covering the period October 14 to November 13, 2014, the rehabilitation counselor noted that appellant was still in Florida and was unavailable for an initial meeting.

Appellant returned to his home in New Jersey in mid-November 2014. In a letter dated November 24, 2014, OWCP’s rehabilitation specialist informed appellant that an FCE had been scheduled for him on December 9, 2014 to be conducted by Kinematic Consultants. The rehabilitation specialist advised appellant that his benefits would be suspended under 5 U.S.C. § 8123(d) if he failed to attend the appointment and did not show good cause for such absence. In a letter dated December 8, 2014, the rehabilitation specialist advised appellant that his FCE had been rescheduled to December 19, 2014 and was now to be conducted by MSI Physical Therapy.⁵ In a December 8, 2014 facsimile to Kinematic Consultants, appellant advised that, if he returned to work, it would only be as a self-employed general contractor/carpenter.

In a facsimile dated December 9, 2014, appellant advised his rehabilitation specialist and rehabilitation counselor that he just found out that he would need to appear as a witness in superior court on December 19, 2014 in connection with a friend’s civil suit as a plaintiff. He requested rescheduling the FCE.

⁴ The record contains a number of e-mails and text messages from appellant to his rehabilitation counselor and OWCP officials, dated between October and December 2014, in which appellant expressed his frustration with the employing establishment’s handling of his work injury and his attempts to return to light-duty work at the employing establishment. He also expressed his thoughts about what types of jobs he wished to be prepared for through the vocational rehabilitation process. For example, he noted in an October 7, 2014 e-mail to his rehabilitation counselor that he would “never go to work in the construction industry for anyone.”

⁵ The rehabilitation specialist indicated that she had rescheduled the FCE because Kinematic Consultants was unable to receive approval to directly communicate with appellant’s attending physician, and therefore, could not conduct the FCE.

In a December 9, 2014 e-mail to appellant, the rehabilitation counselor requested that appellant submit some type of documentation from the court that substantiated his appearance at court on December 19, 2014.

In a December 12, 2014 e-mail to appellant, the rehabilitation counselor advised that, although appellant had provided a docket number for the court case on December 19, 2014,⁶ she had been advised by the rehabilitation specialist that this was insufficient documentation to reschedule the FCE appointment. The rehabilitation counselor again requested that appellant submit documentation showing that he had been requested to appear in court on December 19, 2014. She indicated, "If OWCP does not receive this documentation and you do not attend the FCE appointment as scheduled, you will be considered noncompliant and this could affect your workers' compensation benefits."

In a December 13, 2014 report covering the period November 14 to December 13, 2014, appellant's rehabilitation counselor indicated that, after appellant's return to New Jersey from Florida, she met with him on December 3, 2014 and noted that he was cooperative and pleasant throughout the interview process while he explained what had happened to him since his work injury. She indicated that appellant had not provided the additional documentation she requested about his planned court appearance on December 19, 2014.

In a December 15, 2014 e-mail to his rehabilitation counselor, appellant indicated that he did not have to explain where or what he needed to do on December 19, 2014. He noted, "The reason does not matter. What matters is I am needed. The appointment at MSI can be changed easier than a need to go to a civil case that is none of the [Department of Labor's] business or yours." In another December 15, 2014 e-mail to his rehabilitation counselor, appellant indicated, "I will not work at a job that I do not want or like." In a December 18, 2014 e-mail, appellant advised his rehabilitation counselor that he would not attend the FCE scheduled for December 19, 2014.

Appellant did not appear for the FCE scheduled for December 19, 2014. In a Form OWCP-44 completed on December 19, 2014, appellant's rehabilitation counselor checked a box entitled "Claimant Obstruction" and noted, "[C]laimant does not appear at scheduled meetings, fails to carry out agreed upon actions."

On January 15, 2015 appellant filed a notice of recurrence (Form CA-2a) claiming he sustained a recurrence of disability on January 2, 2015.⁷

In a letter dated January 30, 2015, OWCP informed appellant that it had been advised by his rehabilitation counselor that he had refused to participate in the vocational rehabilitation effort. It informed him that, under 5 U.S.C. § 8113(b) of FECA, an individual who refuses or impedes a rehabilitation effort without good cause after the initial stages will have his or her

⁶ The record does not appear to contain the communication in which appellant provided this docket number.

⁷ Appellant asserted that on January 2, 2015 he pulled something in his shoulder and neck when the wind blew his truck door away from him while he was trying to open the door. The record does not contain a final decision of OWCP regarding this recurrence claim and the matter is not currently before the Board. 20 C.F.R. §§ 501.2(c) and 501.3.

compensation reduced based on what would have been his or her wage-earning capacity had the training been successfully completed.⁸ OWCP further advised appellant that, under 20 C.F.R. § 10.519 of its regulations, if an individual without good cause fails or refuses to participate in the essential preparatory stages of a rehabilitation effort, it will assume, in the absence of evidence to the contrary, that the rehabilitation effort would have resulted in a return to work with no loss of wage-earning capacity, and compensation will be reduced accordingly, *i.e.*, to zero. It noted that the regulations also provide that this reduction will continue until the individual in good faith complies with OWCP's directions concerning rehabilitation.

Appellant was provided 30 days from the date of the letter to contact OWCP and his rehabilitation counselor in order to make a good faith effort to participate in the rehabilitation effort designed to return him to gainful employment. OWCP informed appellant that, if he believed he had a good reason for not participating in the rehabilitation effort, he should respond within 30 days, with reasons for noncompliance, and submit evidence in support of his position. It noted that, if appellant did not comply with the instructions contained in the letter within 30 days, the rehabilitation effort would be terminated and action would be taken to reduce his compensation under 5 U.S.C. § 8113(b) and 20 C.F.R. § 10.519.

Appellant submitted numerous documents (including letters, e-mails, and administrative documents) regarding various matters such as his recurrence of disability claims for periods in 2013 and 2014, removal from the employing establishment, interactions with supervisors and coworkers, requests for authorization of medical expenses, and attempts to obtain light-duty work at the employing establishment.⁹ He also submitted several medical reports from 2012 and 2013 which were already of record.

In a letter dated February 6, 2015 to OWCP, appellant asserted that he did not refuse to be part of the vocational rehabilitation process and described his rehabilitation counselor as "very nice," but "misguided." He indicated that his rehabilitation counselor suggested that he work as a building inspector, but he had noted that he did not want to be a building inspector and had no desire to go to a vocational school to become one. Appellant indicated that he could not be expected to do a job he does not want to do. He expressed his belief that it was unfair to ask him to work as a building inspector and discussed his desire to work in a law enforcement position for the employing establishment. Appellant discussed his belief that the employing establishment created a hostile working environment and ignored his medical condition. In a February 18, 2015 letter to OWCP, appellant indicated that he was "not trying not to participate" in the vocational rehabilitation effort and noted that he sent faxes to MSI Physical Therapy and Kinematic Consultants, the FCE companies, in order to allow them to "know the truth."

In a Form OWCP-44 completed on February 25, 2015, appellant's rehabilitation counselor checked a box entitled "Claimant Obstruction" and noted, "[C]laimant does not appear at scheduled meetings, fails to carry out agreed upon actions." She indicated that appellant reported in his e-mails that he only wanted to be self-employed as a general contractor or to

⁸ OWCP advised appellant that the initial stages of vocational rehabilitation included interviews, testing, counseling, guidance, and work evaluations.

⁹ A number of the documents contained appellant's handwritten notations.

return to work with the Department of Homeland Security or another law enforcement agency. The rehabilitation counselor indicated that she discussed viable return to work options with appellant, but that he would not entertain any of these options. She concluded that appellant did not want to cooperate with vocational rehabilitation services.

On March 20, 2015 appellant's rehabilitation counselor produced a document entitled "Plan Justification" (Form OWCP-66) outlining vocational rehabilitation objectives for the following positions: labor-crew supervisor, Department of Labor's *Dictionary of Occupational Titles* (DOT) #899.131-010, security guard, DOT No. 372.667-034, and carpenter supervisor, DOT No. 860.131-018. The rehabilitation counselor advised that she devised the vocational rehabilitation plan after engaging in extensive vocational exploration and labor market research, and that appellant's educational level and previous vocational experience had been considered. She provided an opinion that these positions were suitable for appellant.

By decision dated March 26, 2015, OWCP reduced appellant's compensation to zero effective March 26, 2015 under 5 U.S.C. § 8113(b) to reflect his loss of wage-earning capacity had he continued to participate in vocational rehabilitation efforts. It determined that his failure, without good cause, to undergo the essential preparatory effort of vocational testing did not permit a determination of his wage-earning capacity, and that, in the absence of evidence to the contrary, the vocational rehabilitation effort would have resulted in his return to work at the same or higher wages than for the position held when injured. OWCP noted that, in such a circumstance, 5 U.S.C. § 8113(b) of FECA and 20 C.F.R. § 10.519 of OWCP's regulations provide that compensation is reduced to zero. It indicated that, by letter dated January 20, 2015, appellant was directed to make a good faith effort to participate in the rehabilitation effort and was provided the opportunity to comply or to show good cause for his noncompliance. OWCP noted that appellant was advised of the actions that could be taken under 5 U.S.C. § 8113(b) and 20 C.F.R. § 10.519 if he did not make contact for the purpose of participating in the rehabilitation effort or show good cause for his noncompliance. It advised appellant that the reduction in compensation would continue until appellant, in good faith, either participated in the directed vocational rehabilitation efforts, or showed good cause for not complying.

In a letter dated April 23, 2015, counsel advised that appellant agreed to participate in the vocational rehabilitation effort, including the FCE and vocational testing. He requested that vocational testing be scheduled as soon as possible, and that appellant's benefits be restored immediately. Counsel enclosed an April 15, 2015 statement from appellant in which he indicated that he would cooperate with the vocational rehabilitation process.

On May 5, 2015 OWCP received several vocational rehabilitation reports from appellant's rehabilitation counselor, including a January 13, 2015 report in which she indicated that she had identified jobs that were physically and vocationally suitable for appellant including security officer, manager-internal security, house officer/house detective, building inspector, home inspector, construction inspector, and labor crew supervisor.

In a February 13, 2015 report, the rehabilitation counselor noted that appellant continued to insist that he be returned to work in a modified-duty position for the employing establishment and that, if he could not obtain such a job, he wanted to be self-employed as a carpenter.

In a March 13, 2015 report, appellant's rehabilitation counselor indicated that she had completed a Form OWCP-66 outlining vocational rehabilitation objectives for the suitable positions of labor-crew supervisor, security guard, and carpenter supervisor. She noted that appellant continued to indicate that he would only return to work for the employing establishment or be self-employed as a carpenter. The rehabilitation counselor indicated that she offered to meet with appellant to discuss viable job opportunities currently available in the labor market but that appellant declined this offer.

In a March 26, 2015 report, the rehabilitation counselor indicated that she had been in contact with appellant through e-mail correspondence and that appellant continued to maintain that he would not consider any alternative for return to work unless it involved a job with the employing establishment or self-employment as a carpenter. She indicated that she offered to meet with appellant to discuss his rehabilitation plan, but that he refused "stating he will not work for anyone and feels he has been treated unfairly since his injury." The rehabilitation counselor noted in her March 26, 2015 report that she had closed appellant's rehabilitation file that date and that no further work on the case would be performed.

OWCP advised appellant in a May 13, 2015 letter that it had scheduled an FCE for June 1, 2015 with MSI Physical Therapy. By letter dated May 28, 2015, it advised appellant that the FCE had been rescheduled for June 3, 2015. Appellant attended the June 3, 2015 FCE, which results revealed that he had the capacity to work at the heavy demand level.

Appellant, through counsel, requested a telephone hearing with a hearing representative of OWCP's Branch of Hearings and Review. During the July 9, 2015 hearing, he testified regarding the help he rendered to his ill parents between July and November 2014. Appellant also indicated that he had a court appearance for a friend on December 19, 2014, the date of a scheduled FCE, so he let the FCE facility and his rehabilitation counselor know the court docket number. He testified that, in April 2015, he wrote to OWCP confirming that he wanted to participate in the vocational rehabilitation effort and then attended the rescheduled FCE in June 2015.

By decision dated August 18, 2015, OWCP's hearing representative affirmed OWCP's March 26, 2015 decision reducing appellant's compensation to zero effective March 26, 2015. She discussed appellant's various actions, including his refusal to meet with his vocational rehabilitation counselor to discuss a vocational rehabilitation plan outlining several suitable positions.¹⁰ The hearing representative noted that appellant had been advised of the consequences of not participating in the vocational rehabilitation effort, but that he nonetheless had failed to show good cause for not participating in the effort. She found, however, that OWCP should reinstate compensation because appellant had provided a written statement indicating his willingness to undergo vocational rehabilitation. The hearing representative indicated that the effective date of reinstatement should be April 14, 2015, the date appellant indicated in writing his intent to comply, and that he must actually make contact with OWCP and

¹⁰ The hearing representative also discussed appellant's failure to attend a December 19, 2014 FCE due to his claimed need to serve as a witness in connection with a friend's civil suit.

his rehabilitation counselor to resume the vocational rehabilitation effort before compensation would be reinstated.¹¹

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of proving that the disability has ceased or lessened before it may terminate or modify compensation benefits.¹² Section 8113(b) of FECA provides that if an individual, without good cause, fails to apply for and undergo vocational rehabilitation when so directed under section 8104 of FECA, OWCP, “after finding that in the absence of the failure the wage-earning capacity of the individual would probably have substantially increased, may reduce prospectively the monetary compensation of the individual in accordance with what would probably have been his [or her] wage-earning capacity in the absence of the failure,” until the individual in good faith complies with the direction of OWCP.¹³

OWCP regulations, at 20 C.F.R. § 10.519, provide in pertinent part:

“If an employee without good cause fails or refuses to apply for, undergo, participate in, or continue to participate in a vocational rehabilitation effort when so directed, OWCP will act as follows --”

* * *

“(b) Where a suitable job has not been identified, because the failure or refusal occurred in the early, but necessary stages of a vocational rehabilitation effort (that is, meetings with the OWCP nurse, interviews, testing, counseling, functional capacity evaluations, and work evaluations) OWCP cannot determine what would have been the employee’s wage-earning capacity.

(c) Under the circumstances identified in paragraph (b) of this section, in the absence of evidence to the contrary, OWCP will assume that the vocational rehabilitation effort would have resulted in a return to work with no loss of wage-earning capacity, and OWCP will reduce the employee’s monetary compensation accordingly (that is, to zero). This reduction will remain in effect until such time as the employee acts in good faith to comply with the direction of OWCP.”¹⁴

¹¹ The Board notes that the letter in which appellant expressed willingness to cooperate in the vocational rehabilitation effort was dated April 15, 2015, rather than April 14, 2015. The record reflects that appellant’s disability compensation was retroactively reinstated beginning April 14, 2015.

¹² *Betty F. Wade*, 37 ECAB 556, 565 (1986).

¹³ 5 U.S.C. § 8113(b).

¹⁴ 20 C.F.R. § 10.519; *see R.H.*, 58 ECAB 654 (2007).

OWCP procedures state that specific instances of noncooperation include a failure to appear for the initial interview, counseling sessions, an FCE, other interviews conducted by the rehabilitation counselor, vocational testing sessions, and work evaluations, as well as lack of response or inappropriate response to directions in a testing session after several attempts at instruction.¹⁵

ANALYSIS

Appellant's accepted left shoulder injuries include acromioclavicular sprain, rotator cuff strain, and rotator cuff tear. These injuries were sustained during a November 7, 2012 work-related training exercise. OWCP also approved a May 31, 2013 left shoulder arthroscopic procedure. In a May 20, 2014 report, Dr. Lakin, an OWCP referral physician, posited that appellant had permanent work restrictions due to his employment-related left shoulder injuries. He determined that appellant could work eight hours per day with restrictions. Based upon Dr. Lakin's work restrictions, OWCP referred appellant in late July 2014 to a licensed rehabilitation counselor for vocational rehabilitation services designed to return him to work. It later determined that appellant failed to participate in the early stages of the vocational rehabilitation effort and reduced his compensation to zero effective March 26, 2015 under 5 U.S.C. § 8113(b) to reflect his loss of wage-earning capacity had he continued to participate in vocational rehabilitation efforts.

The Board finds that the evidence of record establishes that appellant failed to cooperate with the early stages of the vocational rehabilitation process within the meaning of 5 U.S.C. § 8113(b).

The Board notes that, at the time of the reduction of his compensation effective March 26, 2015, appellant had not yet completed the early, but necessary stages of the vocational rehabilitation effort. Appellant had not completed such early-stage rehabilitation actions as participating in an FCE or engaging in vocational testing.¹⁶ An FCE was scheduled for December 19, 2014, but appellant did not attend this FCE as he indicated that he had to serve as a witness for a friend's civil suit in superior court on December 19, 2014.

Appellant met with his rehabilitation counselor for the first time on December 3, 2014 and the counselor noted that he was cooperative and pleasant throughout the interview process while he explained what had happened to him since his work injury. Around this time, the rehabilitation counselor began to discuss possible rehabilitation goals with appellant, but he submitted e-mails and text messages to her in which he placed self-limitations on what type of jobs would be acceptable. The rehabilitation counselor produced a document entitled "Plan Justification" (Form OWCP-66) outlining vocational rehabilitation objectives for the positions of

¹⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Vocational Rehabilitation Services*, Chapter 2.813.17(b) (February 2011).

¹⁶ See *supra* note 14. The Board notes that a delay in starting rehabilitation efforts occurred because, after the initiation of the vocational rehabilitation effort in late July 2014, appellant was in another state for several months caring for his ill parents. Appellant's rehabilitation counselor made accommodations for this circumstance, although she noted that appellant would only communicate during this period through e-mails or text messages and resisted her requests that they communicate *via* telephone.

labor-crew supervisor, security guard, and carpenter supervisor. However, appellant insisted that he would only work in a modified position for the employing establishment or be self-employed as a carpenter. The rehabilitation counselor indicated that she offered to meet with appellant in March 2015 to discuss viable job opportunities currently available in the labor market, but that appellant declined this offer because he would not consider any alternative for return to work unless it involved a job with the employing establishment or self-employment as a carpenter.¹⁷

The Board finds that these actions constitute noncooperation with the early, but necessary stages of the vocational rehabilitation effort. As noted above, examples of such noncooperation include failure to appear for counseling sessions and other interviews conducted by the rehabilitation counselor.¹⁸ The Board has noted that a claimant is expected to treat the vocational rehabilitation effort as seriously as employment and reasons for lack of cooperation should be considered in this light.¹⁹ Appellant's actions show that he did not treat the vocational rehabilitation effort with the requisite level of seriousness and these actions, including a documented refusal to meet with his rehabilitation counselor to discuss rehabilitation goals, are sufficient to justify reduction of his compensation to zero effective March 26, 2015.²⁰

The Board notes that, prior to the reduction of compensation effective March 26, 2015, OWCP sent appellant a letter advising him of the consequences, under 5 U.S.C. § 8113(b) of FECA and 20 C.F.R. § 10.519 of its regulations, of not participating with the vocational rehabilitation effort. OWCP advised appellant that, if an individual without good cause fails or refuses to participate in the essential preparatory stages of a rehabilitation effort, it will assume, in the absence of evidence to the contrary, that the rehabilitation effort would have resulted in a return to work with no loss of wage-earning capacity, and compensation will be reduced accordingly, *i.e.*, to zero. Appellant was provided 30 days from the date of the letter to contact OWCP and his rehabilitation counselor in order to make a good faith effort to participate in the rehabilitation effort designed to return him to gainful employment. OWCP informed appellant that, if he believed he had a good reason for not participating in the rehabilitation effort, he should advise it within 30 days, provide reasons for noncompliance, and submit evidence in support of his position.

However, appellant did not contact OWCP or his rehabilitation counselor prior to the March 26, 2015 reduction of his compensation to clearly express his intent to resume participation in the vocational rehabilitation effort, nor did he provide good cause for such noncooperation. He sent letters to OWCP insisting that he had not failed to cooperate with the vocational rehabilitation effort, but he continued to insist that he would only return to work under self-imposed limitations.

¹⁷ In Form OWCP-44 completed on February 25, 2015, the rehabilitation counselor noted that she discussed viable return to work options with appellant, but that he would not entertain any of these options. She also indicated that appellant told her that "he will not work for anyone."

¹⁸ See *supra* note 15.

¹⁹ *K.P.*, Docket No.13-56 (issued March 21, 2013).

²⁰ *Sam S. Wright*, 56 EACB 358 (2005) (finding that instances of noncooperation with rehabilitation efforts, such as failing to attend a meeting or interview, must be documented by the record).

On appeal, counsel argues that agents from the employing establishment's Office of Inspector General had improper contacts with appellant's attending physicians. However, this argument is irrelevant to the issue on appeal. Counsel also argues that appellant provided a valid reason for missing the FCE scheduled for December 19, 2014, but the Board notes that the primary reason that appellant was deemed to have failed to cooperate with the early necessary stages of the vocational rehabilitation effort was that he refused to meet with his rehabilitation counselor to discuss various vocational rehabilitation possibilities.

Because OWCP established that appellant failed to participate, without good cause, in the early, but necessary stages of a vocational rehabilitation effort, it properly found that vocational training would probably have increased his wage-earning capacity, and reduced his compensation to zero in accordance with what would have probably been his wage-earning capacity had he completed the vocational rehabilitation efforts.²¹ Appellant failed to participate in the rehabilitation program without "good cause." Therefore, OWCP properly reduced appellant's compensation to zero effective March 26, 2015 pursuant to 5 U.S.C. § 8113(b).²²

CONCLUSION

The Board finds that OWCP properly reduced appellant's compensation to zero effective March 26, 2015 under 5 U.S.C. § 8113(b) for failing to cooperate with the early but necessary stages of the vocational rehabilitation effort.

²¹ See *supra* note 14.

²² The Board notes that, in her August 18, 2015 decision, OWCP's hearing representative indicated that OWCP should reinstate compensation because appellant had provided a written statement in mid-April 2014 indicating his willingness to undergo vocational rehabilitation. Appellant attended an FCE in June 2014 and OWCP retroactively reinstated his disability compensation effective April 14, 2015.

ORDER

IT IS HEREBY ORDERED THAT the August 18, 2015 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: June 1, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board